

Upon the election of any one of the preceding Groups, the Examiner further required restriction to a single sequence.

Applicants respectfully traverse the restriction requirement and provisionally elect the subject matter of group I, presented in claims 1-2, drawn to a purified nucleic acid molecule, and the sequence of SEQ ID NO: 1, for further prosecution. However, Applicants submit that the Patent Office has not proven that the search and examination of the entire application would impose an undue burden. Applicants submit that the complete examination would be handled most expeditiously by treating all of the pending claims as a single entity. As MPEP 803 directs, “[i]f the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.”

Applicants respectfully submit that the Examiner has not shown that a search and examination of the entire application would cause a serious burden. Rather, a serious burden would arise if the application were restricted.

No serious burden is created for the Examiner by running a simultaneous computerized search of the nucleic acids of Group I and the substantially purified protein of Group II. The single search may be run in conjunction with databases such as those available at <http://www.ncbi.nlm.nih>. A single search for a particular nucleotide sequence and its translation product, for example, would automatically yield results from Groups I and II without any undue burden on the Examiner. In addition, the search would yield the results from the transformed/transgenic plants of group III.

Furthermore, the Examiner has imposed a sequence election requirement applicable to all groups because “each nucleotide sequence is presumed to represent an independent and distinct

invention". Office Action of May 15, 2002 at page 3. However, this approach contravenes the USPTO policy as set forth in the Manual of Patent Examining Procedure stating that "to further aid the biotechnology industry in protecting its intellectual property without creating an undue burden on the Office, the Commissioner has decided ... to permit a reasonable number of such nucleotide sequences to be claimed in a single application." (MPEP, 8<sup>th</sup> ed., August 2001, Section 803.04). The MPEP further provides that "[i]t has been determined that normally ten sequences constitute a reasonable number for examination purposes." (emphasis added) *Id.* While the Examiner requires that a single nucleotide sequence be selected, no reason has been provided for this deviation from articulated Patent Office policy. (Office Action dated May 15, 2002 at page 4; MPEP, 8<sup>th</sup> ed., August 2001, Section 803.04).

Based upon the foregoing, Applicants submit that the restriction requirement is improper and therefore must be withdrawn. In order to facilitate prosecution, however, Applicants have provisionally elected, with traverse, the subject matter of Group I and the specific nucleotide sequence set forth in SEQ. ID NO: 1.

Should the Examiner have any questions regarding this application, the Examiner is invited to telephone the undersigned at the number provided.

Applicants do not believe that any fees or extensions of time under 37 C.F.R. 1.136 are required in conjunction with this submission other than those set forth in the accompanying letter. However, in the event that extensions of time are necessary to prevent the abandonment of this patent application then such extensions of time are hereby petitioned. The U.S. Patent and Trademark Office is hereby authorized to charge any fees that may be required in conjunction with this submission to Deposit Account Number 13-4125, referencing matter number 38-21(51464)B.

Respectfully submitted,

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Date: May 31, 02

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